

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MOULTON MUNICIPAL GAS COMPANY, CITY OF MOULTON	DOCKET NO. P-853
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued November 26, 2003)

On March 19, 2003, the Moulton Municipal Gas Company, City of Moulton (Moulton), filed a petition and exhibits for a permit for an existing 2.375-inch diameter natural gas pipeline approximately 5.3 miles long in Appanoose County, Iowa. The petition is for an existing pipeline built in 1973 and upgraded in 1975. When constructed in 1973, the pipeline was operated at less than 150 psig so a permit was not required. In 1975, in Docket No. P-740, Moulton obtained Pipeline Permit No. 869 for permission to increase the operating pressure of the line to 600 psig.

Pipeline Permit No. 869 expired on September 26, 2000. Utilities Board (Board) staff discovered through a review of permit records that the permit had expired and notified Moulton by letter dated February 3, 2003.

The pipeline carries natural gas from a connection with an ANR Pipeline Company pipeline to a regulator station in Moulton, where the gas pressure is reduced for delivery through gas distribution mains to customers in Moulton. The

pipeline has a maximum allowable operating pressure of 600 psig. Moulton filed amendments to its petition and exhibits on August 15 and October 7, 2003.

On November 21, 2003, the Board assigned this proceeding to a presiding officer and directed that a procedural schedule be established.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2003).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

Iowa Code § 479.31 provides that any person who violates the chapter or any rule or order issued pursuant to the chapter is subject to a civil penalty not to exceed \$10,000 for each violation. Each day the violation continues is a separate offense, but the maximum civil penalty shall not exceed \$500,000 for any related series of violations. By its failure to timely seek an extension of its permit, Moulton is potentially subject to a civil penalty pursuant to Iowa Code § 479.31.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and

the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, the civil penalty issue, and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC 10.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare

adequately for the hearing so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also may diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

Moulton must submit prepared testimony and exhibits prior to the hearing. At a minimum, Moulton's prepared testimony must address the issues listed above, and must address the issue identified in the memo dated October 31, 2003, by Mr. Jeffrey O'Neal, attached to this order. Moulton must address in its prepared testimony whether it has all necessary property rights for the pipeline. In particular, Moulton's testimony must address whether Moulton has easements for the portions of the pipeline on private property, and whether any easements it holds remain current and valid even though the pipeline permit expired. In addition, Moulton must address why it did not discover the permit had expired, whether it has any other pipelines that do not have current permits, what procedures Moulton has put in place to ensure that its pipelines are permitted and that permits will be timely renewed, and why the Board should not impose a civil penalty for the violation pursuant to Iowa Code § 479.31. Moulton should address the factors in § 479.31 when discussing whether a civil penalty is appropriate. If Moulton wishes to file a brief explaining and supporting its position with respect to the civil penalty issue, it must do so with its prepared testimony according to the procedural schedule.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before

the hearing in accordance with the procedural schedule. If the Consumer Advocate asserts that the Board should impose a civil penalty pursuant to Iowa Code § 479.31, it must file prepared testimony and/or a legal brief explaining and supporting its position according to the procedural schedule.

Objectors who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when an objector has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

PARTY STATUS

Moulton and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order. Moulton does not request the right of eminent domain for this pipeline.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit.

Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits has been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Board's Records Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary of the Board. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine 199 IAC 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There is a link to the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE AND STAFF WITNESS AVAILABILITY

Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board, prepared a memo dated October 31, 2003, concerning Moulton's petition. A copy of his memo is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the memo and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the memo must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prepared testimony and at the hearing. Mr. O'Neal will be present at the hearing and available for cross-examination regarding his memo.

Mr. Reed Helm, utility regulatory inspector for the Board, conducted a field inspection of the route and inspected the pipeline for compliance with federal pipeline safety standards adopted by the Board. Mr. Helm filed a report regarding his inspection on June 23, 2003. Mr. Helm's conclusion that there are no safety code compliance issues, maintenance needs, or other matters that need to be addressed in this docket is referred to in Mr. O'Neal's report. If any party wishes to have Mr. Helm present at the hearing and available for cross-examination regarding his inspection and report, it must file a request no later than January 9, 2004.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to Moulton's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.

2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be accompanied by a certificate of service as discussed in this order.

3. The following procedural schedule is established:

a. On or before December 19, 2003, Moulton must file prepared direct testimony relating to its petition for a permit for its natural gas pipeline, as discussed in this order. If Moulton wishes to file a brief explaining and supporting its position with respect to the civil penalty issue, it must do so with its prepared testimony on or before December 19, 2003.

b. If the Consumer Advocate asserts that the Board should impose a civil penalty pursuant to Iowa Code § 479.31, it must file prepared testimony and/or a legal brief explaining and supporting its position on or before January 8, 2004. If the Consumer Advocate chooses to file prepared responsive testimony on any other issue, it must do so on or before January 8, 2004.

c. If any objector chooses to file prepared responsive testimony, it must do so on or before January 8, 2004.

d. If any party wishes to have Mr. Helm present at the hearing and available for cross-examination regarding his inspection and report, it must file a request no later than January 9, 2004.

e. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Wednesday, January 14, 2004, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Each party must provide a copy of its prefiled testimony to the court reporter at the hearing. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than January 9, 2004, to request that appropriate arrangements be made.

4. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d".

5. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's memo dated October 31, 2003, which is attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.

6. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon Moulton, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

7. Moulton must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 26th day of November, 2003.

**Department of Commerce
UTILITIES DIVISION
SAFETY & ENGINEERING SECTION**

TO: Docket No. P-853

FROM: Jeffrey L. O'Neal

DATE: October 31, 2003

SUBJ: Staff Review of City of Moulton Petition for Pipeline Permit for 5.3 miles of 2.375-inch Diameter Natural Gas Pipeline in Appanoose County, Iowa.

On March 19, 2003, the City of Moulton (Moulton), filed a petition for pipeline permit for an existing 5.3 miles of 2.375-inch diameter natural gas pipeline in Appanoose County, Iowa, for which the previous pipeline permit had expired on September 26, 2000. This pipeline requires a permit under 199 IAC 10.16 because it operates at a pressure greater than 150 psig. Earlier this year, Board staff discovered through a review of permit records that the permit for this pipeline had expired, and by letter dated February 3, 2003, notified Moulton of this.

An informational meeting was not held for this petition for permit, because it is for an existing pipeline that previously had a pipeline permit, and no new construction is proposed.

History

This pipeline was constructed without a permit in 1973, and initially operated at less than 150 psig. In 1975, Moulton filed a petition for pipeline permit, to obtain permission to increase the operating pressure of this pipeline to 600 psig. The Decision and Order Granting a Permit, issued September 26, 1975, in Docket No. P-740, states, "The line was originally installed during the Summer of 1973 ... and was not subject to our permit requirements of Chapter 490 Code in that it was operating at less than 150 pounds per square inch operating pressure." Pipeline Permit No. 869 was issued to the City of Moulton for the Moulton Lateral on September 26, 1975, for the transportation of natural gas at a maximum operating pressure of 600 psi. Pipeline Permit No. 869 expired on September 26, 2000. In a letter from Bill Buss, a consultant from Hall Engineering assisting the city with the case, filed October 7, 2003, on behalf of Moulton, he states Moulton was unaware that the permit expired in 2000.

Route and Safety

On May 9, 2003, Reed Helm, Utility Regulation Inspector, conducted a field examination of the proposed route and inspected the pipeline for compliance with federal pipeline safety standards adopted by the Board. He filed a report regarding this inspection on June 23, 2003, in which he states: "The inspection found no safety code compliance issues, maintenance needs, or other matters that need to be addressed in this docket."

This pipeline carries natural gas from a connection with an ANR Pipeline Company pipeline to a regulator station in Moulton, where the gas pressure is reduced for delivery through gas distribution mains to customers in Moulton. The pipeline has a maximum allowable operating pressure of 600 psig.

Much of the route is in public road right-of-way, but portions of the route are on private property. The route passes through hilly to gently rolling pasture and cropland. Most of the route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192; the portion of the route within the city limits of Moulton is in a Class 2 location. Class 1 is a low population density classification; Class 2 is a higher population density classification. (See § 192.5 for definitions of class locations.)

Petition

By letters dated June 23, 2003, and September 25, 2003, Board staff advised Moulton of petition deficiencies requiring correction, and requested additional information. On August 15, 2003, and October 7, 2003, Moulton filed revisions to the petition and exhibits and provided additional information.

The fact that this pipeline was built and operated before the initial permit was obtained for the pipeline implies that easements would not be tied to a permit, but to confirm this for the record, Moulton should be asked to address in prefiled testimony or at the hearing whether they have all necessary property rights, and whether all their easements remain current and valid even though the permit lapsed.

No objections have been filed as of the date of this report.

Conclusions

I have reviewed the petition and exhibits in this docket. It appears from the information presented that the pipeline complies with all design, construction, testing, operating and maintenance requirements of the Board. Recent inspections by Board staff found no problems with the route of the pipeline, and no conflicts with pipeline safety standards. The filing appears in sufficient order that the petition can be set for hearing.

Moulton should be asked to address in prefiled testimony or at the hearing whether they have all necessary property rights, and whether all their easements remain current and valid even though the permit lapsed.